

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4629-01
Bill No.: SB 529
Subject: Contracts and Contractors; Public Buildings
Type: Original
Date: January 8, 2014

Bill Summary: This proposal modifies the Missouri Public Prompt Payment Act and the law relating to public works projects.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue Fund	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Conservation Commission	Unknown Less than \$100,000	Unknown Less than \$100,000	Unknown Less than \$100,000
University	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on Other State Funds	Unknown Less than \$100,000 to (Unknown)	Unknown Less than \$100,000 to (Unknown)	Unknown Less than \$100,000 to (Unknown)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Office of Administration - Division of Facilities Management, Design and Construction (FMDC)** assume this proposal amends §§34.057 and 107.170, RSMo and affects how FMDC administers capital improvement contracts.

§34.057 is amended to require that FMDC will need to make at least monthly payments to design consultants. FMDC usually make monthly payments already on large projects (greater than \$10 million construction cost), but it will affect most of FMDC's smaller projects by at least doubling the number of invoices required to be paid in a timely manner. Currently FMDC pays design consultants at the end of each design phase. If a consultant requests monthly payments during contract negotiations, that request usually is granted.

§34.057 is amended to reduce permissible retainage from 200% to 150% of the value of the incomplete work. The higher retainage is more effective to provide an incentive to ensure the contracted work is completed. It's more difficult, and more expensive, to engage another contractor to finish another contractor's incomplete work. The reduction in retainage will adversely impact FMDC's ability to manage and close out stock issue confirmation projects.

The Accounting Unit within FMDC would need an Accountant I FTE (\$29,616) to cover the additional workload of processing additional invoices necessitated by the amendment to §34.057.

Oversight assumes that progress payments to the contractor can be made on a lump sum basis according to the terms of the lump sum contract in §34.057 and therefore FMDC can absorb any costs with existing resources. However, if additional staffing is needed, FMDC can request funding through the appropriation process.

Officials at the **Department of Conservation (MDC)** assume an unknown positive fiscal impact on the department of less than \$100,000. Passage of this proposal would allow a savings to MDC's contracts when the bond threshold is increased to \$50,000 because the agency would not have to pay the additional costs associated with bonding.

Officials at the **Department of Labor and Industrial Relations, Missouri Department of Transportation, Department of Higher Education, Department of Insurance, Financial Institutions and Professional Registration and Department of Elementary and Secondary Education** each assume no fiscal impact to their respective agencies from this proposal.

ASSUMPTION (continued)

Officials at **Northwest Missouri State University** assume there would be some minor savings on projects between \$25,000 - \$50,000 where bonding would not be required. They currently don't have any projects scheduled during our fiscal note period and since they comply with other items they assume no fiscal impact from this proposal.

Officials at the **City of Kansas City** assume this proposal would result in additional costs in interest on payments not made to engineers, architects, and land surveyors. The reduction in retainage from 200% to 150% for the remaining items may result in additional costs to the City if the work must be completed by others. They believe that if another contractor comes in to do the work it could easily cost 200%. However at this time exact amounts are unknown.

Officials at the **City of Columbia** assume an unknown cost since the bill could reduce the City's ability to enforce adequate and timely completion of projects by reducing the retainage from 10% to 5% on projects that exceed \$50,000 and by reducing the amount for minor items that still need to be completed from 200% of cost to 150%.

Officials at the **City of O'Fallon** assume unknown costs and will need to reevaluate what determines a completed project and withhold payment on individual items of what one would consider in violation or acceptable under the Prompt Payment Act.

Officials at the **Missouri State University** assume an unknown cost since revenues from this proposal would not be lost, however, control of the project is lessened. Actual monetary costs are not increased but the public owner loses leverage to have a contractor successfully complete a project. Retainage is to be reduced from 200% on unsatisfactory work to 150% of its value. Since the work is unsatisfactory, the public owner should be provided some protection in the event they need to find another contractor to satisfactorily finish or complete the project required.

Officials at the **Missouri Western State University, Francis Howell School District, University of Missouri System, St. Louis County Directors of Elections, University of Central Missouri, Linn State Technical College, and Cole County** each assume no fiscal impact to their respective organizations from this proposal.

ASSUMPTION (continued)

Officials at the following cities: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Dardenne Prairie, Excelsior Springs, Florissant, Frontenac, Fulton, Gladstone, Grandview, Harrisonville, Independence, Jefferson City, Joplin, Kearney, Knob Noster, Ladue, Lake Ozark, Lebanon, Lee Summit, Liberty, Louisiana, Maryland Heights, Maryville, Mexico, Neosho, Pacific, Peculiar, Popular Bluff, Raytown, Republic, Richmond, Rolla, Sedalia, Springfield, St. Charles, St. Joseph, St. Louis, St. Robert, Sugar Creek, Sullivan, Warrensburg, Warrenton, Webb City, Weldon Spring and West Plains did not respond to **Oversight's** request for fiscal impact.

Officials at the following schools: Blue Springs Public Schools, Branson Public Schools, Columbia Public Schools, Fair Grove Schools, Independence Public Schools, Jefferson City Public Schools, Kirksville Public Schools, Lee Summit Public Schools, Mexico Public Schools, Nixa Public Schools, Parkway Public Schools, Raytown School District, Sedalia School District, Sikeston Public Schools, Silex Public Schools, Special School District of St. Louis County, Spickard School District, St Joseph School District, St Louis Public Schools, St. Charles Public Schools, and Sullivan Public Schools did not respond to **Oversight's** request for fiscal impact.

Officials at the following counties: Andrew, Audrain, Barry, Bates, Boone, Buchanan, Callaway, Camden, Cape Girardeau, Carroll, Cass, Clay, Cooper, DeKalb, Franklin, Greene, Holt, Jackson, Jefferson, Johnson, Knox, Laclede, Lawrence, Lincoln, Marion, Miller, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Perry, Pettis, Phelps, Platte, Pulaski, Scott, St. Charles, St. Louis, St. Francois, Taney, Warren, Wayne and Worth did not respond to **Oversight's** request for fiscal impact.

Officials at the following colleges: Crowder, Harris-Stowe, Jefferson College, Southeast Missouri State University, State Fair Community College, St. Charles Community College, Three Rivers Community College and Truman State University did not respond to **Oversight's** request for fiscal impact.

Oversight assumes it is unclear if projects done by the State and by state colleges and universities would be completed as bid or another contractor would need to be brought in. Oversight will reflect a \$0 (no replacement contractors needed) to Unknown impact to General Revenue for all state projects and to University Funds. Additionally, **Oversight** will reflect costs of Unknown for all local political subdivisions.

FISCAL IMPACT - State
Government

FY 2015
 (10 Mo.)

FY 2016

FY 2017

GENERAL REVENUE

Costs - Office of Administration -
 regarding change in retainage rules

\$0 to (Unknown)

\$0 to (Unknown)

\$0 to (Unknown)

**ESTIMATED NET EFFECT ON
 GENERAL REVENUE**

\$0 to (Unknown)

\$0 to (Unknown)

\$0 to (Unknown)

**CONSERVATION COMMISSION
 FUND**

Savings - Conservation Commission -
 bonding fees not paid

Unknown Less
 than \$100,000

Unknown Less
 than \$100,000

Unknown Less
 than \$100,000

**ESTIMATED NET EFFECT ON
 CONSERVATION COMMISSION
 FUND**

**Unknown Less
 than \$100,000**

**Unknown Less
 than \$100,000**

**Unknown Less
 than \$100,000**

UNIVERSITY FUNDS

Costs - University Funds - regarding
 change in retainage rules

\$0 to (Unknown)

\$0 to (Unknown)

\$0 to (Unknown)

**ESTIMATED NET EFFECT ON
 UNIVERSITY FUNDS**

\$0 to (Unknown)

\$0 to (Unknown)

\$0 to (Unknown)

FISCAL IMPACT - Local Government

FY 2015
(10 Mo.)

FY 2016

FY 2017

LOCAL POLITICAL SUBDIVISION FUNDS

Costs - Local Political Subdivision -
change in retainage rules

(Unknown)

(Unknown)

(Unknown)

**ESTIMATED NET EFFECT ON
LOCAL POLITICAL SUBDIVISION
FUNDS**

(Unknown)

(Unknown)

(Unknown)

FISCAL IMPACT - Small Business

Small businesses which include contractors, professional engineers, architects, landscape architects or land surveyors could be affected from this proposal.

FISCAL DESCRIPTION

This act modifies the Missouri Public Prompt Payment Act and the law relating to public works projects. Under current law, all public works contracts made by a political subdivision for a public works project must provide for prompt payment to the contractor. This act provides that the contracts must also provide for prompt payment of any professional engineer, architect, landscape architect, or land surveyor. Currently, a public owner may retain 5% of the value of a public works contract or up to 10% if it is determined by the public owner and the architect or engineer determine that a higher rate is required to ensure performance. This act provides that a public owner may retain up to 10% if the contractor is not required to obtain a bond because the contract is not estimated to exceed \$50,000.

Under current law, retainage may be adjusted prior to completion when work is proceeding satisfactorily and retainage is paid after substantial completion of the contract or per contract terms. In such cases, 200% of the value of the remaining work is withheld until completion. This act provides that 150% of the value is withheld until completion. Under current law, the public owner must pay the retainage after substantial completion of the work, or as provided per contract, to the contractor for state highway road or bridge projects administered by the State Highways and Transportation Commission. This act requires the owner to pay at least 98% of the retainage to the contractor and for the contractor to pay subcontractors and suppliers after substantial completion or as provided per contract.

NM:LR:OD

FISCAL DESCRIPTION (continued)

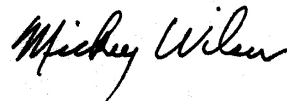
This act also provides that, if the owner determines the work is not substantially completed, the owner must provide a written explanation within 14 calendar days to the contractor. The contractor is then required to provide the notice to any subcontractor or suppliers responsible. If the explanation is not given by the public body, the public body must pay at least 98% of the retainage within 30 calendar days. Currently, contractors must pay subcontractors and suppliers when they receive payment less any retention not to exceed 10%. This act lowers the retention to 5%. Current law provides that when the public owner does not release full payment due because there are specific areas of work or materials the owner is rejecting, the subcontractors or suppliers involved are not paid for the rejected work. This act specifies that the subcontractors or suppliers are not paid provided the owner gives a written explanation as to why the work or supplies were rejected.

This act requires the public owner to include any withheld retainage with final payment of moneys owed to the contractor within 30 days of the due date. In addition, this act requires the public owner to pay any professional engineer, architect, landscape architect, or land surveyor the amount due within 30 days after receiving an invoice. If full payment is not made, the contracting agency must pay 1.5% interest per month it remains unpaid. Currently, contractors on public works projects are obligated to require contractors to furnish a bond when the estimated cost of the project exceeds \$25,000. This act changes that amount to \$50,000.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Missouri Western State University
Francis Howell School District
Northwest Missouri State University
City of Kansas City
St. Louis County Directors of Elections
Department of Labor and Industrial Relations
Department of Conservation
Missouri Department of Transportation
University of Central Missouri
Linn State Technical College
City of Columbia
Missouri State University
Cole County
Department of Insurance, Financial Institutions and Professional Registration
City of O'Fallon
Office of Administration
University of Missouri System
Department of Higher Education
Department of Elementary and Secondary Education



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January 8, 2014

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